

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

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MOLLY FOX,

Plaintiff,

vs.

CLERK-SANITIA
No. CV 01-379 MV/DJS

PROFOAM INTERNATIONAL, INC.

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER came before the Court on Defendant's Motion for Change of Venue, filed May 22, 2001 [**Doc. No. 8**]. Having considered the motion, relevant law and otherwise being fully informed, the Court finds that the motion is well-taken and will be **granted**.

Defendant Profoam International, Inc. ("Profoam") filed a motion to change the venue to the Eastern District of Kentucky. Plaintiff has not filed a response. Pursuant to D.N.M. LR-Civ. 7.5(b), the failure of a party to file a response in opposition to any motion constitutes consent to grant the motion. Further, in the parties Joint Motion for a Stay, Plaintiff indicates that she does not oppose the motion.

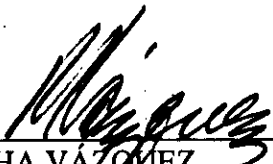
Finally, 28 U.S.C. § 1404 provides that "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). As Profoam points out, a civil action based upon diversity of citizenship may be brought in a district where the defendant resides. 28 U.S.C. § 1391(a)(1). Profoam is a Kentucky corporation with its principal place of business in

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Lexington, Kentucky, which is in the Eastern District of Kentucky. Therefore, the action could have been brought in the Eastern District of Kentucky. Further, it is in the interests of justice for the case to be transferred to the Eastern District of Kentucky. Profoam is a small company with only eight employees. Anna Hartje, the President, CEO and majority shareholder states by affidavit that she is an integral part of the day-to-day operations of Profoam. For her to be in New Mexico defending this litigation would be too great a hardship on the company. Further, the witnesses and evidence are in Kentucky. Because the motion for a change of venue has merit and it is not opposed, the Court will grant the motion.

IT IS THEREFORE ORDERED that Defendant's Motion for Change of Venue, filed May 22, 2001 [**Doc. No. 8**] is hereby **granted**. This case will be transferred to the United States District Court in the Eastern District of Kentucky.

Dated this 8th day of August, 2001.



MARTHA VÁZQUEZ
UNITED STATES DISTRICT JUDGE

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